



Santa Clara Law Review

Volume 35 | Number 4

Article 1

1-1-1995

Symposium: Nafta and Gatt: The Impact of International Treaties: Introduction

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Recommended Citation

Mark J. Spaulding, Symposium, *Symposium: Nafta and Gatt: The Impact of International Treaties: Introduction*, 35 SANTA CLARA L. REV. 1123 (1995).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol35/iss4/1>

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SYMPOSIUM

INTRODUCTION NAFTA AND GATT: THE IMPACT OF INTERNATIONAL TREATIES ON ENVIRONMENTAL LAW AND PRACTICE

The NAFTA and GATT conference which was to have taken place in early 1995 at the Institute of the Americas on the University of California, San Diego campus was organized and sponsored by the Environmental Law Section of the California State Bar. Co-sponsors were the International Law Section, the Institute of the Americas and the American Bar Association Section on Natural Resources, Energy and Environmental Law. Unfortunately, this conference had to be cancelled due to a low number of registrants. Between the time that we organized the conference and mailed out the fliers for the conference, the General Agreement on Tariffs and Trade (GATT) had been passed by Congress, the Congress' majority party had changed, and the Mexican economy had destabilized. This combination of events shifted attention away from the topic of the conference. The GATT was no longer under debate and the threat to environmental law posed by the Republican majority had replaced any potential threat posed by GATT or NAFTA. In addition, the destabilization in Mexico may also have lessened any practitioner's view of this conference as a useful investment which might lead to work for their practice, in that Mexico may not produce legal work for U.S. lawyers for months.

Fortunately, before the conference was cancelled, some of our speakers had contributed excellent papers on the topics on which they were to speak. It is the authors' pleasure to share them with you in this symposium edition of the *Santa Clara Law Review*. Please note that the form of the papers varies—this is due to the papers being contributed for distribution at the conference, rather than formal publication.

The intent of the conference was to examine the impact that the NAFTA and GATT trade agreements might have on domestic environmental law, and how practitioners might be prepared for those effects.

"Environmental Reform Priorities for the World Trading System" was authored by Justin Ward, a Senior Policy Analyst from the Natural Resources Defense Council. Mr. Ward is widely recognized as the creator of the environmental side agreement to the NAFTA. It was primarily his work that lead to the final document adopted by the three signatory countries. Mr. Ward's paper focuses on the GATT and the World Trade Organization and makes suggestions for reform in the areas of public participation on environmental issues, the resolution of conflicts between GATT and environmental treaties, funding, and institutional mechanisms.

"Transparency of Environmental Regulation, Public Participation and the Resolution of International Environmental Disputes" is a paper which I prepared based on my own participation in the negotiations and drafting of the NAFTA environmental side agreement. The paper focuses on individual access to information and citizen input to the environmental secretariat created by the environmental side agreement.

"Rhetoric or Reality: The Impact of the Uruguay Round Agreement on Federal and State Environmental Laws" was authored by Zane Gresham, a partner in the San Francisco law firm of Morrison & Foerster, ably assisted by an associate of that firm, Thomas A. Bloomfield. Mr. Gresham has written and spoken extensively on the issue of free trade and the environment, including transboundary environmental issues and trade restrictions based on environmental concerns. His paper focuses on the agreements related to sanitary and phytosanitary measures, technical barriers to trade, and the new dispute resolution mechanisms under the GATT and World Trade Organization. The paper concludes with a discussion on the use of trade measures to further environmental objectives.

"Trade Agreements and Environmental Sovereignty: Case Studies from Canada" was authored by J. Owen Saunders, the Executive Director of the Canadian Institute of Resources Law and an Adjunct Professor of law at the University of Calgary. Mr. Saunders has written extensively on Canadian and international aspects of natural resources and environmental

law. His paper is an excellent review of the U.S.-Canada Free Trade Agreement experience, including a discussion of the *Softwood Lumber* case and other issues.

"Exporting Environmentalism" was authored by Joshua R. Floum, a partner in the San Francisco law firm of Heller, Ehrman, White and McAuliffe. Mr. Floum was lead counsel for Earth Island Institute in its action to enforce the foreign fleet provisions of the Marine Mammal Protection Act, and to lessen the impact of shrimp fishing on endangered sea turtles in the Gulf of Mexico. It was also Mr. Floum who filed an amicus curiae brief on behalf of Earth Island in the Tuna-Dolphin proceedings under GATT. Mr. Floum's paper reviews the use of market power to improve the environment, placing a value on the environment, cost shifting and related issues.

"Canadian Environmental Laws, Policies and Politics: A Primer" was authored by Howard Mann, who is a private practitioner in international and environmental law and policy with offices in Ottawa and Quebec. Mr. Mann formerly worked within the government of Canada and participated in negotiating the North American Agreement on Environmental Cooperation and other international and bilateral environmental agreements. His paper reviews the constitutional and legislative framework of Canada and its provinces, as well as the political context in which environmental agreements are negotiated. Mr. Mann also comments on future policy directions related to trade and environmental issues for Canada.

We would like to thank the *Santa Clara Law Review* for publishing these papers. We hope that you enjoy them as much as we did.

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